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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,085	02/02/2004	Toshimichi Minowa	056203.44307C3	6560

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 CROWELL & MORING LLP  
 INTELLECTUAL PROPERTY GROUP  
 P.O. BOX 14300  
 WASHINGTON, DC 20044-4300

EXAMINER

TRAN, DALENA

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20050527

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

<b>Office Action Summary</b>	<b>Application No.</b> 10/768,085	<b>Applicant(s)</b> MINOWA ET AL.	
	<b>Examiner</b> Dalena Tran	<b>Art Unit</b> 3661	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38,40,42 and 44 is/are rejected.
- 7) ☒ Claim(s) 39,41,43 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### **Notice to Applicant(s)**

1. This office action is responsive to the amendment filed on 3/7/05. Claims 38-45 are pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 38, and 42, are rejected under 35 U.S.C. 102(b) as being anticipated by Togai et al. (5,069,181).

As per claim 38, Togai et al. disclose a method of controlling a vehicle having a first running mode wherein a driving shaft torque of the vehicle is controlled according to a first target value determined from an accelerator pedal position (see column 4, lines 20-31) and a second running mode wherein the driving shaft torque of the vehicle is controlled according to a second target value determined from at least one of a target vehicle speed and a headway distance of vehicle (see column 4, lines 32-62), comprising: when second running mode is changed to first running mode, changing the target value of the driving shaft torque instantaneously from the second target value to the first target value (see columns 6-7, lines 55-55; and columns 8-9, lines 3-8).

Claim 42, is an apparatus claims corresponding to method claim 38 above.

Therefore, it is rejected for the same rationales set forth as above.

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*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 40, and 44, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mimura et al. (4,989,149) in view of Togai et al. (5,382,205).

As per claim 40, Mimura et al. disclose a method of controlling a vehicle having a first running mode wherein an engine torque of the vehicle is controlled according to a first target value determined from an accelerator pedal position (see columns 4-5, lines 48-53). Mimura et al. do not disclose a second running mode. However, Togai et al. disclose a second running mode wherein the engine torque is controlled according to a second target value determined from at least one of a target vehicle speed and a headway distance of vehicle (see columns 3-4, lines 49-39; and columns 10-11, lines 48-27), comprising: when second running mode is changed to first running mode, changing the target value of the engine torque instantaneously from the second target value to the first target value (see columns 20-21, lines 41-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teach of Mimura et al. by combining a second running mode for controlling vehicle stability and drivability of the vehicle.

Claim 44, is an apparatus claims corresponding to method claim 40 above.

Therefore, it is rejected for the same rationales set forth as above.

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6. Claims 39, 41, 43, and 45, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Remarks**

7. Applicant's argument filed on 3/7/05 has been fully considered. Upon updated search, the new ground of rejection has been set forth as above.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dalena Tran whose telephone number is 571-272-6968. The examiner can normally be reached on M-F 6:30 AM-4:00 PM), off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on 571-272-6956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner  
Dalena Tran



May 27, 2005